

Serial No. 10/729,859  
Docket No. NAY 0001 PA/31558.2

Applicants respectfully traverse the Examiner's Election/Restriction Requirement and request reconsideration and withdrawal of this Requirement for the following reasons.

Specifically, restriction is only proper if:

1. inventions identified by the Examiner are independent or distinct; and
2. there is a serious burden on the Examiner if restriction is not required  
(emphasis added). (M.P.E.P. §803)

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions. (*ibid.*)

Moreover, the Examiner should, make a proper requirement as early as possible in the prosecution, in the first action if possible, otherwise, as soon as a proper requirement develops (M.P.E.P. §811)

In the instant case, the Applicants respectfully submit that the Examiner has failed to establish a serious burden, that restriction is not required. The Examiner has established a *prima facie* showing of the burden by establishing that "Inventions" I (claims 1, 3, 4, 9, 11, 12, 13) and II (claims 5 to 8), as grouped by the examiner, are classified in different sub-classes and therefore might necessitate more than one search. Applicants, however, respectfully submit that no actual burden exists as a result of the separate classification of "Inventions" I and II.

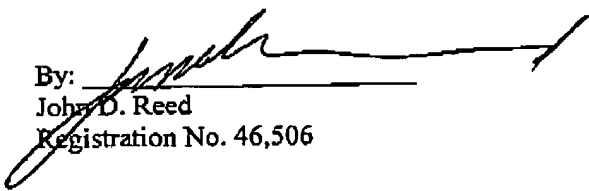
Serial No. 10/729,859  
Docket No. NAY 0001 PA/31558.2

Specifically, the applicants note that the Election/Restriction Requirement issued as a second action. Claims directed to "Inventions" I and II were pending prior to the first Office Action, and were examined on the merits in the first action. In fact, claims 5 to 8 (i.e. "Invention" II) have been allowed (see Office Action mailed February 16, 2005). An additional search should therefore not be necessary, and has not been necessitated by the applicants. A mere observation that the groups of claims may be separately classified at this stage of prosecution does not establish the necessity for an additional search.

Without establishing the necessity of an additional search, the Examiner has not established a serious burden in examining all claims in this application. Withdrawal of the Requirement for Restriction is accordingly urged.

In the event that the Election/Restriction Requirement is not reconsidered and withdrawn, Applicants provisionally elect "Invention" I (Claims 1, 3, 4, 9, 11, 12, and 13).

Respectfully submitted,  
DINSMORE & SHOHL LLP

By:   
John D. Reed  
Registration No. 46,506

One Dayton Centre  
One South Main Street, Suite 1300  
Dayton, Ohio 45402  
Telephone: (937) 449-6400  
Facsimile: (937) 449-6405  
November 23, 2005  
93417-1  
JDR/kec  
Encl.